

STATEMENT OF COMMISSIONER JONATHAN ADELSTEIN  
Before the Federal Communications Bar Association  
November 5, 2003

It's been an interesting Fall at the Commission. Just when I thought Commissioner Copps and I had finished what the Chairman dubbed our Magical Mystery Tour, the Chairman decided to go on tour with us himself. So the Chairman is putting the band back together and starting a Come Back Tour.

So far we've planned 6 gigs – including one in my home state of South Dakota. I commend the Chairman for not letting the Magical Media Mystery Tour die. It's clear the public has a lot to say.

The first of our gigs was held two weeks ago in Charlotte. By all accounts, the reviews are positive. It's always refreshing to get away from DC lobbyists – and instead hear directly from people *organized* by DC lobbyists.

Seriously, I'm glad the Chairman is getting us out to communities like Charlotte to see how broadcasters are meeting their local community needs. One issue that we heard loudly in the panel discussions and in public comment was the difficulty local artists are having getting airtime on local broadcast stations. North Carolina's local artists and musicians stood up and declared their frustration with what they viewed as payola – the need for big labels to pay radio broadcasters for airtime. As one commenter put it, “payola is alive and well in Charlotte.”

As an amateur musician myself – and someone who cares about more talented artists – these concerns struck a chord, so to speak. As we begin a new inquiry into local broadcasting, we should explore these serious allegations of “payola.” That term was coined by Variety magazine in 1938, and grew to scandalous proportions in the late 1950s and 1960s. Many say it is just as prevalent today, although in different forms. Each involve paying, either directly or in-kind, for access to the public airwaves – with no disclosure.

Today payola could mean influencing artists and musicians to play at certain concerts or in certain venues that benefit the radio broadcasters. It could come in the form of lunches or cocktail parties where music companies must pay thousands of dollars just to talk with radio programmers from increasingly consolidated companies. And it could take the form of music companies paying “independent promoters,” who in turn pay radio companies for the privilege of consulting for the station and getting early notice of the station's playlists.

Now, isn't that a bit backward? In most industries, the company receiving the benefit of outside consultants *pays* for those services. How many consultants or lawyers in this room want to pay your clients to take your advice? I think you get my point.

And some say these independent promoters pay between \$100,000 to \$400,000 per station, depending on the size of the market – that’s up to \$5,000 per song for stations in large markets. But it costs the record labels much more to pay independent promoters. All told, some estimate that payola costs the music industry \$150 to \$300 million each year. And these costs are often charged back to the artists and musicians themselves. Recording artist Tift Merritt testified in Charlotte that these days payola doesn’t guarantee your song *will* be played, but to not pay it means your song definitely *won’t* be played.

Some say independent promoters are supposed to have specialized knowledge of local markets that help them pitch songs most likely to be hits. If so, one would expect to find lots of local artists receiving airplay on local stations. Instead, radio programming has become even more homogenized. There is little local flavor anymore on the radio. One artist at the Charlotte hearing said he had to go to LA to make a name for himself just to get played on the radio in his hometown of Charlotte.

Last April, after the radio industry’s music promotion practices were the subject of a Senate Commerce Committee hearing, Clear Channel announced it would no longer work with independent music promoters. This was a significant announcement and ushered in a sense of cautious optimism for a lot of artists. The company reportedly took in as much as \$15 million annually from independent promoters. So there was an expectation this step forward would force other companies to respond.

It’s now been 6 months, and many are unsure of the structural changes that have resulted. We need to find out what changes have taken place, and whether that company’s experience can serve as a model for others.

This problem was never limited to any single company or any one form. Instead, as we heard powerfully from local artists in Charlotte, and as I heard across the country in our media ownership hearings, this is a serious problem that has become institutionalized across a number of formats, from top-40 to urban, hip-hop radio. Payola affects a range of people – from artists and musicians to labor groups, retailers, and every person who listens to the radio. It is one of the ways that consolidated companies can capitalize on their increasing bulk. Radio conglomerates now have the clout to launch a song into many markets at one time, or to banish a song into oblivion.

Given the seriousness of the allegations, we need to find out if there’s any fire underneath all of the smoke. For all of the anecdotes we hear, there’s not enough hard evidence to determine what actions we might need to take. I’m discussing with my colleagues how we might launch an inquiry to determine the nature and extent of this problem, and to see if there is any evidence that might form the basis for enforcement activities or changes in our disclosure rules.

Unfortunately, it seems the pay-for-play mentality is also taking on other forms. We’ve been hearing more and more about broadcast news programs that sell segments which appear to be part of their regular news coverage.

WFLA-TV, an NBC affiliate in Tampa, Florida, made some headlines recently when it was reported they were selling segments of their Daytime morning program. This station, with a converged newspaper and television news bureau, is often touted as an example of how cross ownership of newspapers and TV stations will lead to more and better resources for the news. It turns out there are more resources – for \$2,500, you can buy 4 to 6 minutes of airtime. The segment makes no mention of the payment or by whom, although a written message comes up during the closing credits. I’ve never once read closing credits on a TV show – have you?

The station owner claims the show is not about the news and is not about breaking any new ground. He seems right on both accounts. Many don’t consider paid-for segments real news, and it appears to be an increasingly popular phenomenon. In fact, another station in Mississippi reportedly sold on-air interviews on its news program – a 2 minute segment cost \$500 according to the station’s sales flier. And those interviews were actually conducted by the station’s news anchors. Other stations are reportedly running health segments featuring hospitals and medical centers paying for feature stories.

These disguised infomercials are being dubbed as the latest descent into pay-for-play journalism. This commercialization of the news blurs the lines between infomercial, infotainment, and genuine information. With pay-for-play, is the local broadcaster making independent determinations of the needs of listeners in their community, or is the entire broadcast day simply up for sale? And if so, does the listening public understand the terms?

The public deserves to know who is trying to persuade them. Payola is bad enough for music. Payola on the news should be unthinkable.

In today’s economy and in the midst of the digital transition, I realize that news is an expensive venture. I can understand the need for broadcasters to find additional revenue streams. But it shouldn’t come at the cost of broadcast ethics and journalism. We need to determine whether the public is being deceived, thinking a story or product review was broadcast on its own merit when in fact it was a paid commercial advertisement or a cross-promotional plug for the media company’s other products.

Perhaps the public understands that stories that look and feel like objective news stories are really infomercials. But we can’t be sure. Projecting an image of impartiality for a news program when it’s not may very well undermine the public’s trust in broadcasting.

I believe it’s time to stand up to protect the integrity of the public airwaves. Technology has produced a lot of new ways people hear about new music or get information. But just as it was when I was growing up, radio still is the main way to expose consumers to new music. And back then lots of radio stations actually reported the news. To the extent payola exists, it denies access to radio for local performing artists

who cannot or choose not to spend thousands of dollars to promote a new song. It denies listeners the opportunity to hear songs from local artists or songs selected truly for their own merits.

It's not illegal for a radio station to take money in exchange for playing a song, as long as that payment is disclosed to listeners. To me, paying an annual fee for a year's worth of payola is not much different than paying directly for airplay. Surely our broad authority – in not just one but two specific sections of the Act – extends to all forms of direct or indirect influence, whether for a particular song, a range of songs or a record label.

It's been 40 years since enactment of the payola statutes. It's time for the FCC to probe whether our rules adequately deter potentially new forms of payola. If the practices are still occurring, we have direct statutory authority, as well as an overall charge to regulate radio communications. So there is a real need for the FCC to review its sponsorship identification rules to make sure we are addressing modern day pay-for-play practices in the most effective way possible given our clear responsibility under the law.

That's what Senator Feingold suggested last year. An FCC review has also been urged by a broad coalition of artists and music industry groups in a joint statement last month. And just this week, Senate Commerce Committee Chairman McCain is questioning payola and paid-for-journalism as a sham on the American public.

A democratic society is made up of a variety of local cultures and voices. These voices should have some measure of access to their public airwaves. And they should expect that unless prominently stated otherwise, what has been broadcast over their public airwaves has not been paid for.

As I've learned in numerous hearings around the country and in e-mails and contacts with my office, the public is rightly concerned with the state of broadcasting today. People have a personal relationship with their local broadcast stations. They are angry that commercial broadcasting is increasingly about the bottom line. As we enter a time when the same owner now has an opportunity for its voice to be magnified digitally, from one channel to say six, or a triopoly to eighteen, it is time to examine the public interest obligations of broadcasters in the digital era. Broadcasting is still the engine that drives viewers, and stations are still accountable to their communities.

Some station owners excel at serving their local communities and promoting local artists and local talent. Other broadcasters tell me marketplace forces are sufficient to foster localism – that it's in a station's best interest to serve the local community and cover the local news.

Yet, a recent study by the Alliance for Better Campaigns found that community public affairs programming accounts for less than ½ of 1 percent of local TV

programming nationwide – that compares to more than 14 percent for paid infomercials. So we may be getting tight abs, but are we getting a flabby democracy?

I look forward to continuing our dialogue with the public about the future of our media, about how to protect the public's interest on the airwaves. So keep an eye out for the tour bus. I hope to see you – and all of your well-organized clients – on the road.

For anyone who would want a digital copy of today's remarks – I hear digital copies are quite valuable these days – just let me know and I can appropriately *flag* it for you. I'm sure it will be picked up by lots of legitimate news sources around the country – you know – the wire services, the New York Times – Howard Stern.

As a final note, let me state explicitly – and in no uncertain terms – that today's remarks were not a paid promotional advertisement. No one directly or indirectly paid me to say anything to you today. Oh, except for that wonderful lunch.

So, in the interests of full disclosure, this message has been brought to you by the FCBA.